



# WISCONSIN REGULATORY DIGEST

A Publication of the  
**DEPARTMENT OF REGULATION AND LICENSING FOR  
CEMETERY AUTHORITIES, CEMETERY SALESPERSONS AND PRENEED SELLERS**  
**Volume 4, No. 1** **December, 1996**

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## **Petition For Declaratory Judgment Concerning Joint Ownership**

The petition for declaratory judgment which was filed by Cemetery Services, Inc., and SCI Wisconsin Financial Services, Inc., is still before the court. Briefs have been filed by various parties. The court has not yet reached a decision. This ruling relates to the circumstances under which a person, an entity or a subsidiary of an entity may operate both a cemetery and a funeral establishment in Wisconsin.

## **Actions of Cemetery Advisory Committee**

The Cemetery Advisory Committee has spent several meetings discussing possible statutory changes. More discussion is still needed to complete all of the items on the committee's list of priorities. Changes recommended by the committee are the following:

1. That s. 157.11 (9), Stats., which requires a cemetery which has received a gift to increase its surety bonds to cover the amount of the gift, be repealed and replaced with a requirement that cemeteries which receive gifts in excess of a specific dollar amount be required to keep track of the amount and purpose of the gift in a gift ledger.
2. That all cemeteries in Wisconsin be required to notify the Department of their existence and pay a nominal fee so that the Department may create a directory of all Wisconsin cemeteries.
3. That all cemeteries having at least 20 burials a year be required to be licensed and that the law provide for averaging the number of burials over several years.
4. That a specific provision be placed in Chapter 157, Stats., which refers to the 100% trusting requirement for the preneed sale of burial vaults, as found in sec. 445.125 (1), Stats.

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## **CEMETERY ADVISORY COMMITTEE**

Marie Drescher, Tomah  
Dewey Mathewson, New London  
Reverend LeRoy Mixon, Milwaukee  
John Nelson, Green Bay  
E. Glen Porter, III, New Berlin  
Laurel Schaftery, Waukesha  
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## **Administrative Staff:**

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5. That the law should require trusting 40% of each payment of principal that is received from the sale of cemetery merchandise or an undeveloped space under a preneed sales contract and that the provisions relating to the "wholesale cost ratio" should be repealed. This recommendation would not eliminate the alternative for a surety bond in lieu of trusting the money.

6. That the trusting requirement for the sale of mausoleum spaces be 10% of the sales price and that an appropriate clause be created to clarify the transition from the current requirement for 25% of the cost of construction to the new 10% of sale price requirement.

7. To create the following definition of "cemetery": "a place used or intended to be used for the interment of human remains. A cemetery may contain land or earth interment; mausoleum, vault, or crypt interment; a columbarium or other structure or place used or intended to be used for the interment of

cremated human remains; or any combination of one or more of such structures or places.

### **Proposed Administrative Rule Changes**

The Department of Regulation and Licensing has proposed several rule changes in response to suggestions offered by the Department's Legal Services Rules Review Committee. Most of the changes relate to grammar, style, clarity of language and similar issues; however, one provision would repeal the \$40 annual report filing fee, beginning with the reports which will be due on March 30, 1998. Please refer to the rule draft on the following pages.

A hearing has been scheduled for Wednesday, February 19, at 9:30 a.m. in Room 180 of the Washington Square Building, located at 1400 E. Washington Avenue, Madison, WI. Written comments will be considered, if received by the Department on or before March 5, 1997.

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## **PROPOSED ADMINISTRATIVE RULE**

An order of the Department of Regulation and Licensing to repeal RL 50.03 and 50.05; to renumber Chapter RL 50; to renumber and amend RL 50.02; to amend RL 52.02 (2), 52.04 (2) (b), 53.02 (3), 54.04 (1) (b), (3) and (4), 54.05 (2) and (3); and to create Chapter RL 50 and 52.04 (2) (d) relating to the regulation of cemetery authorities, cemetery salespersons and preneed sellers of cemetery merchandise.

Analysis prepared by the Department of Regulation and Licensing.

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### **ANALYSIS**

Statutes authorizing promulgation: ss. 157.19, 157.62 (2) and (7), 227.11 (2), 440.91, 440.92 (6) and (7), Stats.

Statutes interpreted: ss. 157.11, 157.19, 157.62, 157.63, 440.91 and 440.92, Stats.

In this proposed rule-making order the Department of Regulation and Licensing rennumbers Chapter RL 50 to Chapter RL 51 and creates a new Chapter RL 50 which defines a term used in Chapter 440, Stats., and which specifies the additional information which the department may require of applicants for registration as a cemetery authority, a cemetery salesperson or a preneed seller. 1989 Wisconsin Act 307 initially required the department to establish by rule fees for the registration of cemeteries, cemetery salespersons and preneed sellers of cemetery merchandise. The Act also stated and continues to state that the department may establish by rule a report filing fee. Chapter RL 50 initially established such fees. However, the Biennial Budget Bill, 1991 Wisconsin Act 39, created statutory fees for registering cemetery authorities, cemetery salespersons and preneed sellers. Therefore, Chapter RL 50 was amended to remove the registration fees. It still requires a \$40.00 reporting filing fee, with some exceptions. This rule proposal repeals the report filing fee required of cemetery authorities and preneed sellers of cemetery merchandise. The department proposes removing the report filing fee from the rules because the registration renewal fees in s. 440.08 (2) (a) 21, 22 and 23, Stats., are based on a formula which includes the costs of regulation and enforcement. This formula is used to determine the renewal fees of all professions and occupations regulated by the department. Costs associated with reviewing annual reports and conducting financial audits of care accounts and preneed trust accounts should be included in the registration renewal fee. There is no need for a separate report filing fee in the rule. The rule proposal also repeals obsolete provisions, removes the requirement that certain application forms or requests be notarized and clarifies several existing provisions in the rules.

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## TEXT OF RULE

SECTION 1. Chapter RL 50 is renumbered Chapter RL 51 and RL 51.02 is amended to read:

RL 51.02 FILING OF ANNUAL REPORTS. Cemetery authorities required to file an annual report under s. 157.62 (2), Stats., and preneed sellers required to file an annual report under s. 440.92 (6), Stats., shall do so on or before ~~the 60th day after the last day of the reporting period. The annual reports shall be accompanied by the filing fee required under s. RL 50.05~~ April 1 of each year.

SECTION 2. RL 50.03 and 50.05 are repealed.

SECTION 3. Chapter RL 50 is created to read:

### Chapter RL 50

#### AUTHORITY, DEFINITIONS AND APPLICATIONS FOR REGISTRATION

RL 50.01 AUTHORITY. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 440.91 and 440.92, Stats.

RL 50.02 DEFINITION. In s. 440.91 (2), Stats. and chs. RL 50 to 54, “expects to sell” means that an individual, after reviewing past sales of a prospective employing cemetery authority and current and anticipated market conditions affecting the sale of the employing cemetery’s cemetery lots, reasonably believes that he or she will sell or solicit the sale of a total of 10 or more cemetery lots or mausoleum spaces during a calendar year.

RL 50.03 APPLICATIONS FOR CEMETERY AUTHORITY, CEMETERY SALESPERSON AND PRENEED SELLER. (1) OTHER INFORMATION. In addition to the information which the department must require of applicants for registration as a cemetery authority, a cemetery salesperson or a preneed seller pursuant to ss. 440.91 and 440.92, Stats., the department may require all of the following:

- (a) Information about any crimes committed by the applicant and any charges pending against the applicant.
- (b) Information about any surrender, resignation, cancellation or denial of an application for a credential or any disciplinary action taken against a credential held by the applicant in Wisconsin or another licensing jurisdiction.
- (c) Information about any disciplinary action pending against the applicant in any jurisdiction and relating to a credential held by the applicant.
- (d) Information about any suits or claims ever having been filed against an applicant as a result of professional services rendered by the applicant.
- (e) Information from an applicant for registration as a cemetery salesperson, relating to whether the applicant expects to sell 10 or more cemetery lots or mausoleum spaces during a calendar year.

(2) BASIS FOR DENIAL OF APPLICATION. The department may limit or deny an application for registration as a cemetery authority, cemetery salesperson or preneed seller for any of the grounds for which the department may discipline a credential holder under s. 440.93, Stats.

SECTION 4. RL 52.02 (2) is amended to read:

RL 52.02 (2) COMPLETE ANSWERS; CERTIFICATION. No application shall be processed until all questions appearing on the application are fully completed, and certified as accurate, ~~and sworn to before a notary public~~, and all required documents are received by the department.

SECTION 5. RL 52.04(2) (b) is amended to read:

RL 52.04 (2) (b) The bond shall be payable to the ~~state~~ department of regulation and licensing for the benefit of purchasers of stored property or their assignees.

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Bulk Rate  
U.S. Postage  
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Madison, WI  
Permit No. 1369

Address Correction Requested

SECTION 6. RL 52.04 (2) (d) is created to read:

RL 52.04 (2) (d) The bond shall remain in effect throughout the time that the warehouse remains approved by the department and the warehouse keeper shall submit a copy of each bond renewal certificate to the department.

SECTION 7. RL 53.02 (3) is amended to read:

RL 53.02 (3) COMPLETE ANSWERS; CERTIFICATION. No request for approval shall be processed until all questions appearing on the application are fully completed, and certified as accurate, ~~and sworn to before a notary public,~~ and all required documents are received by the department.

SECTION 8. RL 54.04 (1) (b), (3) and (4) are amended to read:

RL 54.04 (1) (b) Publicly traded preferred or common stock of regulated utilities in the United States whose debt is rated AA or above by Standards & ~~Poor's~~ Poor's or by Moody's Investors Services. Once the debt rating of the issuing utility drops below an A rating and remains below that rating for 2 consecutive quarters, the cemetery authority shall divest those instruments within 180 days or proceed under par. (e).

(3) No cemetery authority may invest in any entity or company in which an officer or trustee of the cemetery authority ~~has more than a 5% ownership interest~~ is a shareholder who beneficially owns, holds or has the power to vote 5% or more of any class of securities issued by the entity or company.

(4) No cemetery authority may invest in any entity or company in which a spouse or child of an officer or trustee of the cemetery authority or other family member who receives one-half of his or her support from an officer or trustee ~~shall have more than a 5% ownership interest~~ is a shareholder who beneficially owns, holds or has the power to vote 5% or more of any class of securities issued by the entity or company.

SECTION 9. RL 54.05 (2) and (3) are amended:

RL 54.05 (2) If the affidavit submitted to the department pursuant to sub. (1) lists investments in classes other than those described in s. RL 54.04 (1) (a) to (d), the affidavit shall be accompanied by a ~~sworn~~ written statement by a licensed investment advisor or a licensed securities broker, stating that his or her belief that such investments will provide safety equal to or greater than the investment classes described in s. RL 54.04 (1) (a) to (d).

(3) If the investment proposal meets the criteria set forth in s. RL 54.04, the department may issue a letter of approval. ~~Investments which are approved~~ A decision by the department not to approve an alternative investment may be appealed under ch. RL 1.

